



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

STEVEN W EATON MD  
301 WEST ROUND GROVE ROAD SUITE 104  
LEWISVILLE TEXAS 75067

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

#### **Respondent Name**

ACE AMERICAN INSURANCE CO

#### **Carrier's Austin Representative Box**

Box Number 15

#### **MFDR Tracking Number**

M4-06-5838-01

#### **MFDR Date Received**

May 12, 2006

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary taken from the table of disputed services:** "Authorized Procedure # 1589047."

**Amount in Dispute:** \$1,062.50

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Please note that §201.002(c) of the Tex. Occ. Code Ann. Provides: PRACTICE OF CHIROPRACTIC. (c) The practice of chiropractic does not include: (1) incisive or surgical procedures; (2) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or (3) the use of x-ray therapy or therapy that exposes the body to radioactive materials."

**Response Submitted by:** Flahive, Ogden & Latson

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 2, 2005	27906, 76005, 90774, J7120, J3490, A4550, A4212, J2001, J3490, J2001, 99499 and J2250	\$1,062.50	\$433.56

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.202, sets out the fee guidelines for professional medical services provided in the Texas workers' compensation system between August 1, 2003 and March 1, 2008.
3. Division rule at 28 TAC §134.1, effective May 16, 2002, requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated April 2, 2006 and April 20, 2006

- 17 (172) – Payment is adjusted when performed/billed by a provider of this specialty.
- BL – For all reconsiderations/adjustments/payment dispute requests please submit a copy of this EOR

## **Issues**

1. Were the services rendered by an MD or a DC?
2. Did the requestor obtain preauthorization for the disputed procedure?
3. Did the requestor submit documentation to support fair and reasonable reimbursement for the unvalued procedure codes?
4. Did the requestor bill for bundled procedure codes?
5. Is the requestor entitled to reimbursement?

## **Findings**

1. Review of the medical documentation and the CMS-1500 submitted by the requestor documents the provider of service as Steven W. Eaton, MD. The referral doctor who was also indicated on the medical documentation is noted as Marivel C. Subia, DC. Based on the documentation submitted by the requestor and the lack of documentation to support the denial by the insurance carrier, the provider of service was Steven W. Eaton, MD. The disputed charges will therefore be reviewed according to the applicable fee guidelines.
2. Per 28 Texas Administrative Code §134.600, the requestor obtained preauthorization from Concentra on November 23, 2005 for "Right Sacroiliac Joint Injection with anesthesia and fluoroscopy x 1 injection." The disputed charges were preauthorization and will be reviewed according to the applicable fee guidelines.
3. Per 28 Texas Administrative Code §134.202 "(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section." CCI edits were run to determine if edit conflicts are identified. Review of the CCI edits finds:
  - Review of the CMS1500 revealed the requestor billed for the following procedure codes: 27096, 76005, 90774, J7120, J3490, A4550, A4212, J2001, 99499, and J2250.
  - Procedure code A4550. Payment for this service is always bundled into payment for other services not specified and no separate payment is made. Reimbursement cannot be recommended for procedure code A4550.
  - Procedure Code A4212 is an item or service for which payment is bundled into payment for other physician services. Reimbursement cannot be recommended for procedure code A4212.
  - CCI Edit - Procedure 27096 and component procedure J2001 are unbundled. The Standard Policy Statement reads "Misuse of column two codes with column one codes". The use of an appropriate modifier may be allowed. No modifier was appended. Reimbursement cannot be recommended for procedure code J2001 x 2.
  - No CCI edit conflicts were identified for procedure codes: 27096, 76005, 90774, J7120, J3490, 99499 and J2250. MDR will therefore review the disputed procedure codes according to the applicable guidelines.
4. Per 28 Texas Administrative Code §134.202 "(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (1) for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers' compensation system is the effective conversion factor adopted by CMS multiplied by 125%. For Anesthesiology services, the same conversion factor shall be used. (2) for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L: (A) 125% of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule. (B) if the code has no published Medicare rate, 125% of the published Texas Medicaid Fee Schedule Durable Medical Equipment/Medical Supplies Report J, for HCPCS; or (C) if neither paragraph (2)(A) nor (2)(B) of this section apply, then as calculated according to paragraph (6) of this subsection. Review of the submitted documentation finds that:
  - Procedure code J3490 x 2 is defined as "Unclassified drugs."
  - Procedure code 99499 is defined as "Unlisted evaluation and management service."
  - Both the Medicare Fee Schedule and the Texas Medicaid Fee Schedule do not contain values for the procedure codes indicated above. Therefore reimbursement is subject to the provisions of 28 Texas Administrative Code §134.1.

Per 28 Texas Administrative Code §134.202 “(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (6) for products and services for which CMS or the commission does not establish a relative value unit and/or a payment amount the carrier shall assign a relative value, which may be based on nationally recognized published relative value studies, published commission medical dispute decisions, and values assigned for services involving similar work and resource commitments.”

Division rule at 28 TAC §134.1 requires that “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers’ Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission.”

Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

Former 28 Texas Administrative Code §133.307(g)(3)(D), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that:

- The requestor billed procedure codes J3490 x 2, and 99499 on December 2, 2005.
- The procedure codes indicated above do not have a Medicare or Texas Medicaid assigned value.
- Division rule at 28 TAC §134.1, effective May 16, 2002 requires that services not identified in a fee guideline shall be reimbursed at fair and reasonable rates.
- The requestor did not provide documentation to demonstrate how it determined its usual and customary charges for procedure codes J3490 x 2, and 99499.
- Documentation of the comparison of charges to other carriers was not presented for review.
- Documentation of the amount of reimbursement received for these same or similar services was not presented for review.
- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.

The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

5. Per 28 Texas Administrative Code §134.202 “(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (1) for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers’ compensation system is the effective conversion factor adopted by CMS multiplied by 125%...” Review of the submitted documentation finds that:
  - Requestor seeks reimbursement for procedure codes 27096, 76005, J7120 and J2250.
  - The requestor submitted documentation to support that the services were rendered as billed.
  - Reimbursement is therefore recommended for procedure codes 27096, 76005, J7120 and J2250.
  - Procedure Code 27096. The Medicare fee schedule is \$201.29 X 125% = MAR \$251.61. This amount is recommended.
  - Procedure Code 76005. The Medicare fee schedule is \$75.79 X 125% = MAR \$94.74. This amount is recommended.
  - Procedure code 97044 x 1 unit. The CGS Medicare fee schedule is \$68.381 X 125% = MAR \$85.47. Requestor seeks reimbursement in the amount of \$85.00. This amount is recommended.
  - Procedure Code J7120 x 1 unit. The CGS Medicare fee schedule is \$0.926 X 125% = MAR \$1.16. This amount is recommended.
  - Procedure Code J2250 x 3 units. The CGS Medicare fee schedule is \$0.278 X 125% = \$0.35 X 3 units = MAR \$1.05. This amount is recommended.

## **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$433.56.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$433.56 plus applicable accrued interest per 28 Texas Administrative Code §134.803 for dates of service prior to 5/2/06, due within 30 days of receipt of this Order.

### Authorized Signature

_____	_____	April 10, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**